THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.17452 OF 2005

Between:

The State of Andhra Pradesh rep., by its Principal Secretary to Government, Revenue Department, Secretariat, Hyderabad and two others.

… Petitioners.

And

M.Somaiah, S/o Veraiah, age 55 years, Asst. Commercial Tax Officer, Jeedimetla, O/o the Commercial Tax Officer, Jeedimetla, Gagan Vihar Building, Nampally, Hyderabad.

… Respondent.

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.17452 OF 2005

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

The present writ petition is filed against the order of the A.P. Administrative Tribunal in O.A.No.2799 of 2004 dated 7.1.2005 whereby the punishment, imposed on the sole respondent by the impugned order dated 26.4.2004, was set aside and the case of the respondent was directed to be considered for promotion with effect from the date his immediate junior was promoted on 29.4.2004.

Both the learned government pleader for services and Sri G.Gopal Rao, learned

counsel for the respondent, agree that the writ petition itself could be finally disposed of at the admission stage.

Facts to the extent necessary for this writ petition are that the Anti Corruption Bureau (ACB) conducted a surprise check at the commercial tax check post, Peeda Amberpet, Ranga Reddy District on 19.9.1998 and submitted a report to the government. On examination of the ACB report, the Government decided to initiate disciplinary proceedings against Sri M.Sudarshan, the commercial tax officer, Sri M.Somaiah, (respondent herein) and Sri Lakshmi Narasimham, assistant commercial tax officers for the lapses noted against each of them at the time of the surprise check. While the Commissioner of commercial taxes is the disciplinary authority in respect of commercial tax officers, the Deputy commissioner (CT) is the disciplinary authority for the assistant commercial tax officers. Charges were framed, against the respondent herein, in proceedings NO.E1/105/2001 dated 19.1.2001 which reads as under:

"Articles of charges framed against Sri M.Somaiah, ACTO:

Sri M.Somaiah S/o Veeraiah, ACTO while working as ACTO (Int) O/o. CTO Ferozguda had committed grave misconduct inasmuch as on 18.8.1998 whilehe was on night duty along with his CTO Sri Sudershan on vehicle check programme on the Vijayawada high way, illegally detained one Lorry Bearing No.AP 5 T – 2656 at Pedda Ambarpet Check Post from 10.30 p.m. on 18.9.1998 till ACB party noticed the detention of lorry, without giving notice or even informing Sri Sudharshan, CTO, who was available at the check post. Sri M.Somaiah, ACTO also demanded Rs.5500/- as tax and after the visit of ACB party, he collected only Rs.2056/- as tax. Thus, with an ulterior motive to extract bribe from the party, the ACTO acted contrary to the section 29(3) and Rule 46 of APGST Act 1957.

Thus Sri M.Somaiah, ACTO by his above mentioned acts has exhibited lack of integrity, devotion to duty and conduct unbecoming of a Government Servant and thereby contravened Rule 3(1) and (2) of APCS (Conduct) Rules, 1964"

The Deputy commissioner (CT), in his report opined that the charges framed against the commercial tax officer could not be proved and recommended that the government drop further action against him. With reference to the assistant commercial tax officers, including the respondent herein, the Deputy commissioner submitted his report on 27.10.2003 based on the explanations given by them. Since the Commissioner of commercial taxes, the disciplinary authority in respect of the commercial tax officers, is higher in rank than the Deputy commissioner, the disciplinary authority for assistant commercial tax officers, the entire matter was placed before him for his consideration. As disciplinary proceedings were initiated

consequent to the surprise check conducted by the ACB, the Commissioner submitted his report to the government stating that prima facie the vehicles had been detained at the check post for a long time causing inconvenience and giving scope for unnecessary and avoidable criticism. The commissioner, in his proceedings dated 29.12.2003, recommended imposition of minor punishment on both the assistant commercial tax officers. The Government, after carefully examining the matter with respect to the explanation given by the delinquent officers, vide proceedings dated 08.03.2004, decided to drop further action against the commercial tax officer and to impose stoppage of one increment, without cumulative effect, on both the assistant commercial tax officers. The Deputy Commissioner of Commercial Taxes, vide proceedings dated 26.04.2004, imposed the punishment of stoppage of one increment without cumulative effect on the sole respondent herein. Aggrieved thereby the sole respondent filed O.A.No. 2799 of 2004 before the A.P. Administrative Tribunal.

The Tribunal, in its order dated 7.1.2005, held that the disciplinary authority cannot abdicate its powers and is required to pass orders duly applying his mind keeping in view the facts and circumstances of the case and the material available on record and not be influenced by the findings/orders of the higher authority and that any order passed at the instance of the higher authority cannot stand in the eye of law. The Tribunal held that the impugned order, dated 26.4.2004, passed by the deputy commissioner was pursuant to the order of the government dated 8.3.2004 and as the order was passed without application of mind, it was required to be set aside. Consequent upon the impugned order being set aside, the Tribunal held that since the petitioner's case was not considered for promotion on the ground that he was undergoing punishment, his case be considered for promotion according to rules with effect from the date his junior was promoted i.e., 29.4.2004.

Before this Court, Learned government pleader for services would contend that since the departmental proceedings were initially intended to be held against the commercial tax officer and both the assistant commercial tax officers, in case a joint enquiry was required to be conducted, it was only the Commissioner of commercial taxes who was the competent authority to appoint an enquiry officer, and the Deputy commissioner (CT) had no jurisdiction to take disciplinary action against commercial tax officers. According to the Learned Government Pleader, since disciplinary action was initiated consequent on the ACB report, the opinion of the

vigilance commission, through the government, had necessarily to be obtained. Learned government pleader would submit that the order dated 8.3.2004 of the government cannot be construed as a direction to the disciplinary authority and was more in the nature of an advise or a suggestion. According to him, the disciplinary authority had taken an independent decision in the matter and merely because he had come to the same conclusion as that of the government, it cannot be held that the disciplinary authority had passed the order without application of mind. Learned government pleader would refer to the impugned order of punishment dated 26.4.2004 wherein the disciplinary, after considering the explanation submitted by the respondent, found that the explanation submitted by him was far from the truth and was not convincing and that after careful examination, of the explanation on the facts of the case and material on record, he had come to the conclusion that it was just and proper to impose the minor penalty of stoppage of future annual grade increment without cumulative effect for one year for the lapses found and proved during the surprise check conducted by the ACB authorities at the commercial tax check post, Peddambarpet, Ranga Reddy District on 19.9.1998. The impugned order of the Deputy Commissioner of Commercial Taxes dated 26.04.2004 makes no reference to the proceedings of the government dated 8.3.2004.

Rule 9 of the A.P. Civil Service (Classification, Control and Appeal) Rules 1991 (hereinafter referred to as 'CCA Rules') relate to penalties wherein penalties are classified as minor and major penalties. The Minor penalties are:

i. censure;

ii. withholding of promotion;

iii. recovery from his pay of the whole or part of any pecuniary loss caused by him to the State Government or the Central Government or to a local authority or to a corporation owned or controlled by the State or the Central Government, by negligence or breach of orders, while working in any department of the State or the Central Government, Local authority or Corporation concerned;

iv. withholding of increments of pay without cumulative effect;

v. suspension, where a person has already been suspended under Rule 8 to the extent considered necessary;

and the Major penalties are :-

vi. withholding of increments of pay with cumulative effect;

vii. reduction to a lower rank in the seniority list or to a lower stage in the time scale of pay or to a lower time scale of pay not being lower than that to which he was directly recruited or to lower grade or post not being lower than that to which he was directly recruited, whether in the same service or in another Service, State or Subordinate;

viii. compulsory retirement;

ix. removal from service which shall not be a disqualification for future employment under the Government;

x. dismissal from service which shall ordinarily be a disqualification for future employment under the Government:

Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (ix) or clause (x) shall be imposed.

Provided further that in any exceptional case and for special reason to be recorded in writing, any other penalty may be imposed.

While Rule 20 deals with the procedure for imposing major penalties which includes appointment of an enquiry officer, conducting enquiry etc., Rule 22 which prescribes the procedure for imposing minor penalties, only requires a government servant to be informed in writing of the proposed action to be taken against him and of the imputations of misconduct on which it is proposed to be taken, and to give him a reasonable opportunity of making a representation against the proposal. The requirement of holding an enquiry for imposing minor penalty is only if the disciplinary authority is of the opinion that such an enquiry is necessary. In the present case, the procedural requirements of Rule 22 of the CCA Rules have been complied with.

The order of the Deputy commissioner (CT), (the disciplinary authority), is a

reasoned and well considered order and reveals proper application of mind. Merely because the disciplinary authority independently came to the same conclusion, as that of the government, with regards the punishment to be imposed, it cannot be said that the disciplinary authority had abdicated his powers or had passed the order without application of mind. The impugned order of the Tribunal, holding to the contrary, cannot be sustained, and is therefore set aside.

Since the order of the Tribunal is now set aside and the order of the disciplinary authority imposing the punishment of stoppage of one increment without cumulative effect is upheld, the respondent would not be entitled to have his case considered for promotion, in view of the fact that he has suffered a minor penalty, as denial of promotion, for a person held guilty of misconduct, is as a consequence thereof and is not an additional penalty. It is well settled that an officer who is found guilty of misconduct, and on whom punishment is imposed, is not entitled, as a matter of course, to be rewarded by promotion. An employee has no right to claim promotion and has only a right to be considered for promotion. Several factors are required to be borne in mind while considering an officer's case of promotion, the least of which is that the employee should have an unblemished service record. Such a requirement is the minimum expected to ensure a clean and efficient administration and to protect public interest. No employee who has been imposed punishment for proved misconduct can claim to be promoted as a matter of right and denial of promotion, in such circumstances, is not a penalty but a necessary consequence of his conduct. While considering an employee for promotion, his whole record is taken into consideration including the penalty imposed on him. Denial of promotion, in such circumstances cannot be said to be illegal and unjustified. (**Union of India Vs. K.V.Jankiraman**) . The impugned order of the tribunal directing that the respondent's case be considered for promotion, with effect from the date his junior was promoted i.e., 29.4.2004, is also set aside.

Sri G.Gopal Rao, learned counsel for the respondent, would however submit that the respondent had been discriminated inasmuch as the disciplinary action initiated against the commercial tax officer was dropped whereas action was taken against his subordinates, in the rank of assistant commercial tax officers. Learned counsel would refer to the proceedings of the government dated 8.3.2004 wherein it is categorically stated that the government had decided to drop further action against the commercial tax officer. Since we found considerable force in this submission of

Sri G.Gopal Rao, we called for the records, and on a perusal thereof, we notice that Sri. M.Sudarshan, the commercial tax officer, has already retired from service and since he is no longer in service, no disciplinary action can now be initiated against him under the CCA Rules. We also examined as to whether disciplinary action could be taken against the commercial tax officer under the Pension Rules. Since the incident took place on 18.9.1998 nearly seven years ago, no disciplinary action can now be initiated even under the pension rules. Under Rule 9(2)(b)(ii) of the Revised Pension Rules, 1980, departmental proceedings cannot be instituted against a government servant in respect of any event which took place more than 4 years before such institution. It is clear that no disciplinary action can now be taken against the commercial tax officer. No useful purpose would therefore be served in examining as to whether there was any justification for dropping the charges against the commercial tax officer, since, in any event, no disciplinary action can now be taken against him. The mere fact that charges have been dropped against the commercial tax officer would not justify dropping of the charges against the respondent herein. The disciplinary authority, in the impugned order dated 26.4.2004, held the respondent guilty of the charges alleged against him and imposed a minor penalty of stoppage of one increment without cumulative effect.

The scope of interference by this court, in exercise of its jurisdiction under Article 226 of the Constitution of India, in such matters is extremely limited and it is only if the findings of the disciplinary authority are perverse, or are based on no evidence, would any interference be called for. Even with regards the quantum of punishment, it is only if the punishment imposed is one which cannot be imposed at all or is one which shocks the conscience of this court, can interference of this court be justified. The impugned order of the Deputy commissioner (CT) dated 26.4.2004 is a reasoned and well considered order. It cannot also be said that the punishment imposed on the respondent, of stoppage of one increment without cumulative effect, is a punishment which shocks our conscience.

The order of the disciplinary authority dated 26.4.2004 is upheld and the order of the Tribunal dated 07.01.2005 is set aside. The writ petition is allowed. However, in the circumstances, without costs.

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Chelameswar, J

Dt.23.12.2005

_____ Ramesh Ranganathan, J

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